

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

REBECCA MARICLE
Claimant

VS.

MCDONALD'S RESTAURANT
Respondent
Self-Insured

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Docket No. 234,458

ORDER

Claimant appeals the May 9, 2003 Award of Administrative Law Judge Steven J. Howard. The Appeals Board (Board) held oral argument in this matter on October 8, 2003.

APPEARANCES

Claimant appeared by her attorney, Luis O. Mata of Kansas City, Missouri. Respondent appeared by its attorney, Mark E. Kolich of Lenexa, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

Claimant argues entitlement to a functional impairment and a work disability for the injuries alleged on December 27, 1997. The Administrative Law Judge denied claimant benefits, finding claimant had failed to prove that she suffered accidental injury arising out of and in the course of her employment on the date alleged.

Did claimant suffer accidental injury arising out of and in the course of her employment on the date alleged?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

Claimant alleges that on December 27, 1997, she was shoved by a male co-employee named Augustine (Augie), suffering injury to her back. Claimant testified that she was helping to train this employee when a disagreement arose and he became agitated. Claimant testified that after he pushed her, she fell forward, grabbing ahold of a fryer with her left arm and stopping herself from hitting the ground with her right hand. Claimant testified she went for treatment at the University of Kansas Medical Center and, in May of 1998, was diagnosed with a herniated disc, undergoing surgery with Glenn Amundson, M.D., on May 6, 1998. The parties have stipulated that claimant has a 10 percent permanent partial impairment to the body as a whole on a functional basis.

Respondent has presented evidence from several sources contradicting claimant's allegation of an injury.

Respondent provided the work records of claimant, the work records of the individual alleged to have pushed her and the testimony of Dena Moore, claimant's coworker. The work records indicated that claimant did work on December 27, 1997, which was claimant's last day worked. Claimant did testify that the injury occurred on her last day with respondent. While claimant's attorney argued that claimant may have been mistaken with regard to the actual date of accident, claimant's own testimony is uncontradicted regarding the specific date of the alleged accident.

Respondent's records, however, show that Augie did not work on December 27, 1997. In addition, while claimant testified she did not fall clear to the ground when pushed, Dena Moore testified that when she turned, she saw claimant sitting on the floor. Additionally, respondent's records indicated that Ms. Moore, the alleged witness, also did not work on December 27, 1997, thereby casting serious doubt on claimant's credibility as a witness.

The medical records also fail to support claimant's contentions of a work-related accident. Claimant first appeared at the University of Kansas Medical Center on January 2, 1998, with a swollen neck and a sore throat. There was no mention of a back injury or a work-related accident at that time. Claimant first mentioned back pain when going to the Duchesne Clinic on February 24, 1998. At that time, she discussed back pain with no injury explanation. On March 11, 1998, claimant returned to the University of Kansas Medical Center, indicating that she suffered back pain when she was pushed "into wall" at work. Finally, claimant went to Kansas University Physicians, Inc., Orthopedic Surgery, and was treated by Alex Bailey, M.D., for back pain on April 3, 1998. At that time, claimant was unable to describe any injury and stated that her pain had been present since October.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ Here, numerous employment records and medical records contradict claimant's allegations that she suffered an accidental injury on the date alleged. Additionally, the testimony of her coworker contradicts claimant's description of the accident.

The Board finds, based upon a preponderance of the credible evidence, that claimant has failed to prove that she suffered accidental injury arising out of and in the course of her employment on the date alleged and the Award of the Administrative Law Judge should, therefore, be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard dated May 9, 2003, should be, and is hereby, affirmed and claimant is denied benefits, having failed to prove that she suffered accidental arising out of and in the course of her employment on the date alleged.

IT IS SO ORDERED.

Dated this ____ day of October 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Luis O. Mata, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Director

¹ K.S.A. 1997 Supp. 44-501 and K.S.A. 1997 Supp. 44-508(g).